IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

WRIT PETITION NO. 169 OF 2007

Dashrath Sakharam Jadhav & Ors. ...Petitioners
V/s.
Ayub Khan Khodadad Khan & Ors. ...Respondents

Mr.S.A. Sawant for the Petitioners.
Mr.V.R. Dubey for Respondent No.1.
Mr.P.G. Sawant, AGP for Respondent Nos.2 and 3.

CORAM : V.M. KANADE, J.

DATED : MARCH 20, 2007

P.C. :-

1. Heard the learned Counsel for the petitioners and the learned Counsel for the respondents.

2. The petitioners are challenging the order passed by the Maharashtra Slum Areas (L.C.& R.) Tribunal, Mumbai, dated 29th September, 2006 whereby the Tribunal was pleased to set aside the order passed by the Collector refusing to grant permission to respondent no.1 herein to file a suit for eviction against the arrears of rent against the petitioners herein.

3. Brief facts are that the respondent no.1 claims to be the owner of the suit premises in question. This

is disputed by the petitioners herein. It is the case of the respondent no.1 that he has become the owner of the premises and the petitioners therein are not paying rent and as such, they are in arrears of rent and he is entitled to file the suit for eviction on the ground of arrears of rent. It is also his case that he is entitled to develop the said property pursuant to the provisions of sub-clause 5 of Section 22 of the Slum Redevelopment Act. The Collector refused to grant permission to the respondent against which he preferred an appeal before the Tribunal. The Tribunal has allowed the appeal and has granted permission to the respondent-appellant therein to file a suit against the tenants on the ground of arrears of rent and has also permitted him to seek permission from the competent authority after obtaining requisite 70% consent from the occupiers.

4. The learned Counsel for the petitioners submits that the Tribunal has clearly erred in granting permission to the respondent and also further granting him permission to apply for the slum redevelopment. He

submitted that in the first place, the ownership of respondent no.1 is in dispute and further they have been paying the maintenance charges as well as other charges and expenses for maintaining the said property and therefore, there is no question of petitioners being in arrears at any time. He invited my attention to the order passed by the Collector wherein the Collector had specifically directed the respondent to give a notice to tenants for arrears of rent and if the tenants failed to pay the rent within three months, then permission in that event was granted to respondent no.1 to file a suit. He submitted that the appellate court has failed to take into consideration this aspect also. He submitted that several contentions were raised by the petitioners herein before the Collector and which were considered by the Collector and then the permission was refused to the respondent to file a suit.

5. He submitted that these submissions have not been considered by the Tribunal. He submitted that the composite order which has been passed by the Tribunal itself is erroneous as the Tribunal does not have the

requisite authority to grant sanction to the slum redevelopment scheme.

6. The learned Counsel for the respondents vehemently opposed this submission. He invited my attention to the order passed by the Tribunal and submitted that it was not necessary to interfere with the said order.

7. In my view, the submission made by the learned counsel for the petitioner cannot be accepted. The Tribunal after having observed the various submissions made by both the parties has granted permission to the respondent to file a suit against the tenants for recovery of arrears of rent and also for eviction under the ground of non-payment of arrears of rent. This order has been passed subject to two conditions which are imposed which are reproduced hereinbelow :-

> "(a) The appellant who has shown willingness to implement Slum Rehabilitation Scheme on the property in question will be entitled to

implement such scheme and for that purpose he should seek permission and approval of the S.R.A. with the requisite 70% consent of the occupiers i.e. of the respondents-tenants and if he will be given the same by respondents-tenants. He is directed to notify his intention and willingness to the respondents-tenants to that effect in writing regarding his readiness and willingness to implement Slum Rehabilitation Scheme on the property in question and in particular that such scheme would be strictly implemented in compliance with law, rules and conditions of requisite approval and permissions of the S.R.A. and the Guidelines of the S.R.A. for implementation of Slum Rehabilitation Schemes and that the eligible respondents-tenants will be accommodated in the said scheme by giving them free of cost permanent alternative accommodation as per their eligibility for the same as decided by the S.R.A.

(b) In the event of the failure of the respondents tenants to give consent to the appellant for submission of such proposed in writing within a period of six weeks, the appellant will be entitled to file suit against respondents-tenants for recovery of arrears of rent and for eviction on the ground of arrears of rent."

8. From the aforesaid order, it is obvious that the Tribunal protected the interest of the tenants. If the respondent failed to obtain sanction of 70% of the occupiers, then in that event, he cannot approach SRA for redevelopment and in that event, his suit is restricted only on the ground of recovery of arrears of rent and for eviction under the arrears of rent and not redevelopment of the slum. It is obvious that all contentions which are raised by the tenants before the Collector and before the Tribunal will have to be decided by the Rent Court and the tenants can obviously raise the issue of ownership of the premisses by respondent no.1.

9. In view of this, I do not see any reason to interfere with the impugned order while exercising writ jurisdiction.

10. It is clarified that all contentions which are raised by the petitioners herein are kept open and it would be decided by the appropriate court and by the Rent Court in accordance with law.

. Writ petition is disposed of accordingly.

(V.M. Kanade, J.)